IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

JOSEPH SILENCE, *Plaintiff/Appellee*,

v.

SHANE T. BETTS, *Defendant/Appellant*.

No. 1 CA-CV 23-0178
FILED 6-27-2024
AMENDED PER ORDER FILED 7-26-2024

Appeal from the Superior Court in Maricopa County
No. CV2019-000419
The Honorable Richard F. Albrecht, Judge *Pro Tempore*

AFFIRMED

COUNSEL

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Counsel for Plaintiff/Appellee

By Shane Betts
Defendant/Appellant

OPINION

Presiding Judge Anni Hill Foster delivered the opinion of the Court, in which Judge Brian Y. Furuya and Vice Chief Judge Randall M. Howe joined.

F O S T E R, Judge:

¶1 Defendant Shane Betts appeals the superior court's denial of his motion to quash a continuing lien under a writ of garnishment obtained by Joseph Silence and his motion for reconsideration. This case requires this Court to consider how Proposition 209, a voter initiative related to debt collection, affects ongoing wage garnishments.

¶2 Among other things, Proposition 209 amended the statute defining a debtor's disposable earnings subject to garnishment. Ariz. Legis. Serv. Prop. 209 § 6. But Proposition 209 contains a Saving Clause stating it "applies prospectively only" and "does not affect rights and duties that matured before the effective date of this act." *Id.* at § 10. Recently, this Court rejected a constitutional challenge to the Saving Clause, but the parties in that case lacked standing for this Court to decide "how [Proposition 209] impacts individual garnishment proceedings." *Ariz. Creditors Bar Ass'n, Inc. v. State*, 1 CA-CV 22-0765, 2024 WL 1876307, slip op. at *4, ¶¶ 21 (Ariz. App. Apr. 30, 2024) (mem. decision). This Court has also addressed garnishment proceedings arising *after* Proposition 209's effective date when those garnishments are based on a judgment obtained before Proposition 209 became effective. *Id.* at *7, ¶ 32 (citing *HJ Ventures, LLC v. Candelario*, 1 CA-CV 23-0331, 2024 WL 449970, at *2, ¶¶ 13–14 (Ariz. App. Feb. 6, 2024) (mem. decision)). Now this Court must address the effect of Proposition 209 when the judgment and garnishment arose before the effective date.

¶3 Because Silence's rights in the judgment were vested before Proposition 209's enactment, this Court affirms the superior court's denial of Betts's motion to quash and motion for reconsideration. But because the amount of each future paycheck subject to the garnishment order has not yet been determined, Proposition 209's statutory changes affect the amount that may be garnished from each pay period after Proposition 209 became effective.

FACTS AND PROCEDURAL HISTORY

¶4 In 2020, Silence obtained a superior court judgment against Betts for unpaid legal services he provided and for attorneys' fees and costs awarded. On appeal, this Court affirmed the judgment. *Betts v. Samuel E. Carr, D.C., P.C.*, 1 CA-CV 21-0008, 2021 WL 5575195, at *3, ¶ 14 (Ariz. App. Nov. 30, 2021) (mem. decision). During the appeal, the superior court issued a writ of garnishment ordering Betts's employer to turn over Betts's future nonexempt earnings to Silence, also issuing a continuing lien. The employer complied.

¶5 In November 2022, Arizona citizens passed Proposition 209. Betts moved to quash or amend the continuing lien and garnishment because of the changes Proposition 209 made to the law and because he works and receives earnings outside Arizona. But the court denied the motion, finding that the judgment arose before Proposition 209 became effective and that Proposition 209 did not affect rights and duties that matured before the effective date. Betts moved for reconsideration, which the court denied, and Betts timely appealed.

¶6 This Court has jurisdiction under A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

DISCUSSION

¶7 This Court reviews motions to quash for an abuse of discretion. *See Leach v. Hobbs*, 250 Ariz. 572, 577, ¶ 23 (2021) (motion to quash subpoena); *Abbey v. City Court*, 7 Ariz. App. 330, 331 (1968) (motion to quash complaints). Similarly, this Court reviews the superior court's denial of a motion to alter or amend under Arizona Rule of Civil Procedure (Rule) 59 for an abuse of discretion. *See Mullin v. Brown,* 210 Ariz. 545, 547, ¶ *2* (App. 2005). A court abuses its discretion when its discretion is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Tilley v. Delci*, 220 Ariz. 233, 238, ¶ 16 (App. 2009). This Court also reviews motions for reconsideration for an abuse of discretion. *Worldwide Jet Charter, Inc. v. Christian*, 255 Ariz. 67, 70, ¶ 10 (App. 2023). But "issues of law, including statutory interpretation," are reviewed *de novo*. *4QTKIDZ, LLC v. HNT Holdings, LLC*, 253 Ariz. 382, 385, ¶ 5 (2022).

I. The Superior Court Has Jurisdiction.

¶8 Betts argues that Arizona has no jurisdiction to garnish wages that are neither earned nor paid in Arizona. He contends the court relied on what Arizona's Supreme Court declared a "legal fiction" in *Harris v. Balk*, 198 U.S. 215 (1905), to improperly exercise *quasi in rem* jurisdiction over his out of state wages. "[T]he *Harris* fiction [is] that a debt follows the debtor and is located wherever the debtor can be found." *State v. W. Union Fin. Servs., Inc.*, 220 Ariz. 567, 574, ¶ 22 (2009); *accord Harris*, 198 U.S. at 222 ("The obligation of the debtor to pay his debt clings to and accompanies him wherever he goes."). Betts's reliance on *Harris* is misinformed because the superior court relied on personal jurisdiction, not *quasi in rem* jurisdiction. Betts also relies on several other cases for his position that Arizona needs *in rem* jurisdiction over his earnings before it can garnish them. None support his position.

¶9 Betts cites *First Nat'l Bank & Trust Co. v. Pomona Mach. Co.*, 107 Ariz. 286 (1971) (stating that though the court lacked personal jurisdiction over the defendants, it held *in rem* jurisdiction existed because the garnishee was served with the writ in Arizona, the garnishee admitted the debt was owed and the property was located in the state), *W. Union Fin. Servs., Inc.*, 220 Ariz. at 567–68, ¶ 1 (which was distinguished from a post-judgment garnishment case because it involved seizure of wired funds between parties outside the state), and *Polacke v. Superior Court*, 170 Ariz. 217 (App. 1991) (where the court was asked to enforce a judgment from another state where there were no Arizona contacts) to support his appeal. But each of these cases are inapposite because they do not involve similar facts — a garnishment that was issued in Arizona against an Arizona defendant.

¶10 An analogous case to Betts's is *Ellsworth Land and Livestock Inc. v. Bush*, 224 Ariz. 542, 545 (App. 2010). There, the superior court awarded a judgment, and the prevailing party sought a continuing lien against a Canadian company to garnish annuity payments to the debtor. *Id.* at 543, ¶¶ 1–2. By relying on the Restatement (Second) of Conflict of Laws (1971) and finding that the annuity payments were a debt, the court concluded garnishment was proper if the trial court had personal jurisdiction over the Canadian company. *Id.* at 544–545, ¶¶ 10–11. Similarly, here, the superior court correctly exercised personal jurisdiction over Betts's employer; a summons was properly served on its authorized agent within the state. *See* Ariz. R. Civ. P. 4.1(a), (i) (allowing service on a corporation by delivering a summons on the corporation's authorized agent). Thus, the court had jurisdiction to garnish Betts's earnings from his employer.

II. Arizona's Garnishment is Enforceable.

¶11 Between the time of the initiation of the garnishment proceedings and the passage of Proposition 209, Betts worked and received his earnings in Colorado and Texas. Betts argues that those earnings were exempt because Colorado and Texas law prohibited garnishing wages. He cites *Dalton v. Dalton*, 551 S.W.3d 126 (Tex. 2018) as an example of a foreign state not being able to garnish wages earned and paid in Texas. But *Dalton* involved a party attempting to have Texas enforce a non-Texas order. *Dalton*, 551 S.W.3d at 129. While giving full faith and credit to the foreign judgment, the Texas court acknowledged that it could follow its procedures for enforcing a judgment without adopting the practices of the other state. *Id.* at 135–36. Here, Arizona is enforcing an Arizona judgment, and the relevant inquiry is "whether the garnishee is subject to the specific or general jurisdiction of the forum state." *Ellsworth Land and Livestock Inc.*, 224 Ariz. at 545, ¶ 12. Arizona has general jurisdiction over Betts's employer.

III. Betts's Request for Relief for Mistake or Fraud Was Untimely.

¶12 Betts argues that the superior court abused its discretion by denying his motion to quash based on mistake, fraud, or change of law. Although a party may seek relief from a judgment because of a mistake or fraud under Rule 60, Betts made no such Rule 60 motion here. Moreover, to be proper, such a motion must be made "within 6 months after the entry of the judgment or order." Ariz. R. Civ. P. 60(b)(1), (c)(1). In addition, with exceptions not applicable here, a Rule 59 motion to alter or amend (which Betts filed here) "must be filed no later than 15 days after the entry of judgment." Ariz. R. Civ. P. 59(d). The garnishment order that Betts seeks relief from was issued in April 2021. Any motion to quash would have been due in October 2021. But he did not file his motions until November 2022 and February 2023, over a year late. Although the superior court issued a judgment in June 2022, the court merely awarded attorneys' fees and costs incurred upon Betts's unsuccessful appeal; that judgment did not extend the appeal deadline for the underlying garnishment order Betts sought to quash.

IV. Proposition 209 Affects Betts's Nonexempt Earnings After Its Effective Date but Does Not Affect the Order of Continuing Lien.

¶13 Betts contends that the passage of Proposition 209 affords him relief from the judgment. Proposition 209 was a voter initiative passed in 2022 that amended A.R.S. § 33-1131 relating to the portion of a debtor's disposable earnings subject to garnishment. *See* 2022 Prop. 209, § 6

(initiative measure approved Nov. 8, 2022). Before Proposition 209, the amount exempt from garnishment for any workweek was the lesser of 75% of the debtor's disposable earnings or thirty times the federal minimum wage. A.R.S. § 33-1131(B) (2021). Afterward, the exempt amount became the greater of 90% of the debtor's disposable earnings or sixty times the higher of federal, state, or local minimum wage, as applicable. A.R.S. § 33-1131(B) (2023). Silence contends that Proposition 209 does not affect the judgment or garnishment because they arose before Proposition 209 became effective.

¶14 Generally, legislation applies only prospectively unless it "contain[s] an express statement of retroactive intent." *Aranda v. Indus. Comm'n of Ariz.*, 198 Ariz. 467, 470, ¶ 10 (2000) (citing A.R.S. § 1-244 ("No statute is retroactive unless expressly declared therein."")). Proposition 209's Saving Clause expressly states it "applies prospectively only" and "does not affect rights and duties that matured before the effective date of this act." Ariz. Legis. Serv. Prop. 209 § 10. The reference to "matured" in this context is synonymous with "vested." Rights become vested when "every necessary event has occurred" so that the rights are certain to be implemented, and they are not contingent on some future event or merely expectant. *Aranda*, 198 Ariz. at ¶¶ 20–21. Thus, given the Saving Clause, Proposition 209 does not affect the underlying judgment's amount because every necessary event occurred for Silence to obtain it, and the award became immediately enforceable and payable before the enactment of Proposition 209.

¶15 Similarly, Proposition 209 by its own terms does not retroactively apply to wages garnished before its effective date. However, Betts argues for the prospective application of Proposition 209 to eliminate or reduce the amounts garnished. Though Proposition 209 changed some of the statutory provisions related to garnishment, it did not change A.R.S. § 12-1598.11(B), which established that a garnishee has a duty during "each pay period" to "complete the nonexempt earnings statement." The term "nonexempt earnings" is defined as "those earnings or that portion of earnings which is subject to judicial process including garnishment." A.R.S. § 12-1598(10).

¶16 Here, the individual payments from Betts's wages were contingent on Betts's nonexempt earnings during each pay period. *See* A.R.S. § 12-1598.01(A) (providing that earnings become wages to be garnished upon their disbursement by the employer). At the time of the issuance of the garnishment, that amount was no more than 25% of Betts's wages. After enactment of Proposition 209, that amount decreased to 10%.

The employer is responsible for determining the nonexempt portion of Betts's earnings, and it must do so "for each pay period." A.R.S. § 12-1598.11(B). Before calculating and withholding that amount, any nonexempt earnings for that pay period are unknown, let alone payable or immediately enforceable. Thus, the amounts subject to garnishment each pay period after Proposition 209 became effective had not yet matured, and Proposition 209's changes therefore affect the garnishment prospectively. This Court concludes that after Proposition 209's effective date, Betts's employer must impound and pay only those portions of Betts's wages that are nonexempt under the statute as amended by Proposition 209. Betts requested that the superior court quash or amend its order of continuing lien. The order for the continuing lien merely directs Betts's employer to "immediately pay over to the Judgment Creditor, Joseph Silence, all non-exempt earnings withheld from [Betts's] wages . . . after service of the Writ of Garnishment on March 29, 2021."

¶17 Inasmuch as it is directed at nonexempt earnings, the language in this order complies with Arizona statute and was not made inconsistent with the changes made effective under Proposition 209. *See* A.R.S. § 12–1598.10(A) (after service of a writ of garnishment and in the absence of an objection, a court must "order that the garnishment is a continuing lien against the *nonexempt* earnings of the judgment debtor" (emphasis added)); A.R.S. § 12-1598(10) (defining "nonexempt earnings" as "those earnings or that portion of earnings which is subject to judicial process including garnishment."). Because the order of continuing lien remains consistent with Arizona law, the superior court did not err in denying Betts's motion to quash or modify it because of Proposition 209's changes. For the same reason, the court did not err in denying Betts's motion for reconsideration.

CONCLUSION

¶18 For the reasons above, this Court affirms the superior court's rulings denying Betts's motion to quash the continuing lien and his motion for reconsideration.

AMY M. WOOD • Clerk of the Court
FILED: JT